



WISCONSIN SUPREME COURT CALENDAR

September 12, 2002

1:45 p.m.

01-1136-CR State v. Michael W. Carlson

This is a review of a decision of the Wisconsin Court of Appeals, District III (based in Wausau), which affirmed the Brown County Circuit Court, Judges Michael Grzeca and Mark A. Warpinski presiding.

In this case, the Wisconsin Supreme Court will decide whether a defendant deserves a new trial because one member of the jury that convicted him had difficulty understanding English. In deciding this, the Court will determine what level of English a person must possess in order to serve on a jury.

Here is the background: Michael W. Carlson was convicted of second-degree sexual assault as a repeater. One member of the jury that convicted Carlson was Tony Vera, who came to the United States 20 years ago and became a U.S. citizen eight years ago. Vera's native language is Lao. He is employed at a furniture factory, holds a Wisconsin driver's license, follows football, and has taken an English as a Second Language course.

In spite of his history here and his participation in the community, Vera noted on his juror questionnaire that he does not understand English. Ordinarily, this would disqualify a person from serving but in this case, for an unknown reason, the clerk of circuit court kept him on the roster and his name was entered into the computer for random juror selection. During *voir dire*, when attorneys question potential jurors, Vera was not asked any questions individually. The judge asked the group whether anyone had trouble understanding English but Vera did not raise his hand. Ultimately, he was seated on this jury. During deliberations, the jury sent a note to the judge that read:

We believe that you need to talk to Tony. It is our belief that he does not understand most of the trial proceedings. We would like you to evaluate the situation.

The judge discussed the note with the attorneys, who expressed concern that questioning Vera individually might look like an attempt to influence his vote. No further action was taken.

The jury found Carlson guilty and he filed a motion for a new trial due to Vera's alleged inability to understand English. The court (with Judge Mark Warpinski replacing Judge Michael Grzeca) held a hearing at which Vera was questioned at length in English, without an interpreter. His work supervisor and another member of the jury also testified (both said Vera had trouble with English). The judge ultimately determined that Vera did have sufficient understanding of English to have served on the jury, and he denied Carlson a new trial.

At the Court of Appeals, Carlson argued that the trial court was required to take Vera and his fellow juror at the word that he had not understood the testimony. The Court

of Appeals disagreed, concluding that the judge had carefully considered all the evidence on Vera's English abilities and had reached a reasonable conclusion.

The Wisconsin Statutes¹ require only that prospective jurors "understand the English language" in order to serve. The Supreme Court will determine what level of English comprehension constitutes sufficient understanding.

¹ Wis. Stats. §756.02